U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: SEP 2 2 2014

OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE: PETITIONER:
BENEFICIARY:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on January 8, 2014. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on January 24, 2014. The appeal will be dismissed.

According to the petition and the accompanying letter, filed on June 27, 2013, the petitioner seeks classification as an alien of extraordinary ability in the arts, as an "artist in production design and directing," pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section § 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien, as initial evidence, can present evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner files a statement in support of his appeal, with no additional supporting documents. The petitioner asserts that the director correctly concluded that he meets the criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vii), but erred in concluding that he does not meet the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (v) and (viii). For the reasons discussed below, the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

I. THE LAW

Section 203(b) of the Act states, in pertinent part, that:

> 1. Priority workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with extraordinary ability. – An alien is described in this subparagraph if –
>
> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained

national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

United States Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through initial evidence of a one-time achievement, that is a major, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld our decision to deny the petition, the court took issue with our evaluation of the evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Kazarian*, 596 F.3d at 1121-22.

The court stated that our evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this case, the petitioner has not satisfied the antecedent regulatory requirement of presenting at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that he is one of the small

[1] Specifically, the court stated that we had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

percentage who are at the very top in the field of endeavor, or has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Prior O-1 Visa Petitions

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. Contrary to the petitioner's assertions on appeal, the regulatory requirements for an immigrant and nonimmigrant alien of extraordinary ability *in the arts* are dramatically different. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary ability in the arts (including the performing arts) as simply "distinction," which is further defined as follows:

> Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." While the ten immigrant criteria set forth in the regulation at 8 C.F.R. § 204.5(h)(3) appear in nonimmigrant regulations, 8 C.F.R. § 214.2(o)(3)(iii), they refer only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Separate criteria for nonimmigrant aliens of extraordinary ability in the arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The distinction between these fields and the arts, which appears in the regulation at 8 C.F.R. § 214(o), does not appear in the regulation at 8 C.F.R. § 204.5(h). As such, the petitioner's approval for a nonimmigrant visa under the lesser standard of "distinction" is not evidence of his eligibility for the similarly titled immigrant visa.[2]

Moreover, it must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. Dep't of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc.*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v.*

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[2] The record includes evidence of the petitioner working in film or motion picture production in addition to live theater. Under the regulation at 8 C.F.R. § 214.2(o)(3)(i), an O-1 nonimmigrant in the field of motion picture must show extraordinary achievement, not extraordinary ability. The regulation defines "extraordinary achievement" as "a very high level of accomplishment in the motion picture . . . evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture . . . ." 8 C.F.R. § 214.2(o)(3)(ii). As such, a petitioner's approval for an O-1 nonimmigrant visa in the field of motion picture under the lesser standard of "extraordinary achievement" is not evidence of his eligibility for an immigrant visa under the higher standard of "extraordinary ability."

Upchurch, No. 03-10832, 99 F. App'x 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g.*, *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. Civ. A. 98–2855, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

B. Evidentiary Criteria[3]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The petitioner asserts that he meets this criterion based on (1) his Dean's scholarship; (2) his best production design award at the I (3) t award for the film " and (4) the s award for "

The petitioner has not submitted sufficient evidence showing that he meets this criterion. First, the petitioner has not shown that his admission to an academic program and his receipt of a scholarship constitute either a prize or award that recognizes excellence in his field. According to Susan Hilferty, Chair of the Department of Design for Stage and Film, the petitioner was accepted to the Department of Design for Stage and Film, which is rated as one of the top three professional training programs of its kind in the United States. The letter further notes that the petitioner was given a full Dean's scholarship throughout his studies. An opportunity to further one's study with financial assistance does not constitute a nationally or internationally recognized

[3] The petitioner does not claim that he meets the regulatory categories of evidence not discussed in this decision.

prize or award for excellence. The applicant pool for an academic study program excludes individuals who are established and who have already achieved substantial success in the field. At best, the petitioner's admission into the program and his receipt of a scholarship indicate that the school believes he has the potential to achieve success in the field. They do not represent recognition of the petitioner's excellence in the field.

Second, the petitioner's best production design award at the does not meet this criterion. The director concluded that the petitioner's award at the festival constitutes a lesser national or international award. We disagree. An application or petition that does not comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

The petitioner has submitted evidence showing that the awarded him the best production design award for his work in the film " Festival Co-Director October 18, 2013 letter, which Mr. drafted following a template the petitioner provided to Mr (contained in the record), provides information about the festival and past festival winners. Neither the letter nor any other evidence in the record establishes that the awards from the festival are nationally or internationally recognized prizes or awards for excellence in the petitioner's field. The record lacks evidence relating to the standing or prestige of the festival's awards in either the petitioner's field or in the broader film industry. The fact that some of the festival past winners have found fame is insufficient to show the prestige of the festival awards. The evidence in the record does not show that there is a causal connection between the past winners' fame and success and their awards. The petitioner has also not submitted evidence showing how many people were considered for the best production design award or the competitiveness of the award, from which one might conclude that the award is a nationally or internationally recognized award for excellence in the petitioner's field.

Third, the petitioner has not shown that the recognition the film ' garnered meets this criterion. The petitioner has submitted evidence that the ' was one of an unspecific number of films awarded the The petitioner has not provided any document from the that discusses his involvement in the film, or that his involvement in the film was recognized by the . A film that receives recognition from an organization does not mean that all individuals involved in the production of the film also receive recognition from the organization. Under this criterion, the petitioner must establish his receipt of a prize or award, not that he was involved in a project that received a prize or award. Moreover, the petitioner has not provided sufficient evidence relating to the nomination or selection process of the award, or the reputation or prestige of the award in the petitioner's field. The petitioner also has not provided information relating to how many films were considered for the award and how many films ultimately received the award. Indeed, the petitioner has submitted a

partial list of the films that received the showing that for films whose title starts with the letter "D" alone, at least seven of them received the honor.

The petitioner has presented evidence that the film entered the and received the "Official Selection" honor. The petitioner was the production designer for the film. Similar to the recognition of the film discussed above, the petitioner has not provided any document from this festival indicating that the organization recognized the petitioner's involvement in the film. The petitioner must establish his receipt of a prize or award. In addition, the petitioner has not provided sufficient evidence relating to the nomination or selection process of being selected as the festival's Official Selection, or the reputation or prestige of the award. Indeed, according to the festival's website, the festival's film lineup includes the work of "student filmmakers and first time directors/actors." The fact that the festival is inclusive of inexperienced filmmakers, directors and actors is not indicative that being on the festival's film lineup or being named its Official Selection, without more, constitutes the petitioner's receipt of a nationally or internationally recognized award or prize for excellence in the field.

Finally, the evidence submitted to show the recognition of the petitioner's prizes or awards is from the entity that issued the prizes/awards. Such promotional evidence has minimal evidentiary value. *See Braga v. Poulos*, No. CV 06-5105 SJO 10 (C.D. Cal. July 6, 2007), *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not supported the promotional evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the prizes/awards in major trade or nationally circulated publications.

Accordingly, the petitioner has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner asserts that he meets this criterion because he is the recipient of an Dean's scholarship and a member the Neither accomplishment meets this criterion.

First, the petitioner has not shown that or its Department of Design for Stage and Film constitutes an association in the petitioner's field or that his admission in the school constitutes membership. It is a school and it seeks to educate its students. It is not an association that accepts members. There is also no evidence that or its Department of Design for Stage and Film requires outstanding achievements from its students or that the outstanding achievements are judged by recognized experts, as required by the plain language of the criterion. In addition, being awarded

a scholarship is not evidence of the petitioner's membership in a qualifying association. On appeal, the petitioner asserts that his receipt of the scholarship means he is "a member of the 'class.'" The petitioner, however, has not provided any legal support for his assertion that being a member of a "class" at an university is equivalent to being a member in an "association[] in the field for which classification is sought." *See* 8 C.F.R. § 204.5(h)(3)(iii).

Second, the petitioner has not shown that being a member of the meets this criterion. The petitioner has not presented any evidence relating to how one becomes a member of the union or evidence that the union requires outstanding achievements of its members, as judged by recognized national or international experts, as required by the plain language of the criterion.

Accordingly, the petitioner has not presented documentation of his membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iii).

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner asserts that he meets this criterion because he "has received extensive publicity about himself and his work," including articles published about performances, shows and events in which the petitioner was involved. Although the record includes a number of articles, the petitioner has not shown he meets this criterion.

First, the petitioner has presented foreign language articles, but has not provided translations that meet the regulatory requirements under 8 C.F.R. § 103.2(b)(3). The regulation provides that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." The petitioner has not submitted a translation certificate from the translator, certifying that the translation is complete and accurate, or that the translator is competent to translate the foreign language documents into English. As such, the foreign language articles or their translations have no evidentiary weight.

Second, the petitioner has not provided information about the publications that published the articles in the record. He has not established that the publications are professional or major trade publications or constitute other major media, as required by the plain language of the criterion.

Third, the petitioner has not shown that the articles are about him, as relating to his work in the field. Many of the articles do not mention the petitioner by name. The few that do mention the petitioner

by name mention his name once. These articles discuss performances and/or exhibits in which the petitioner was involved in a limited capacity, usually as a set or production designer. These articles are not about the petitioner, they merely list the petitioner as one of a number of individuals who were involved in the production. Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g.*, *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 1, 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

The petitioner submits a piece from in which the petitioner answered 13 questions about his life and his work. The petitioner has not submitted evidence that such a piece, which involves him answering questions, constitutes published material, as the term is used in the criterion. Indeed, the piece does not include information relating to the author of the piece, as required by the plain language of the criterion. The petitioner has also not submitted information relating to the circulation or distribution of

Accordingly, the petitioner has not presented published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iii).

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The petitioner asserts that he meets this criterion because of "the vast number of countries and world renowned productions who have sought to use his work," "the awards he has received," and "the large list of testimonials from top experts in [the petitioner's] field." The petitioner has not shown he meets this criterion.

First, although the evidence shows that the petitioner has assisted and worked for well-known set designers in the field, he has not shown that he has made any original contributions of major significance in the field. He has submitted evidence, including documents and articles relating to opera productions, musical productions, live performances and the opening ceremony of the 2014 which list as the set designer. According to Ms. , the petitioner "has been assisting top designers in the industry successfully since his second year of studies [at and continues to do so nowadays." According to Associate Arts Professor and Head of Set Design at the petitioner "currently works for top designers in the field and will continue to do so while pursuing his personal artistic advancement." According to , the petitioner "was part of an excellent and tireless crew of designers that, under the supervision of mastered the challenging task of creating interior and exterior period sets in Athens and Crete," for the film The evidence further shows that these well-known set designers, including Mr. and Ms. , have been satisfied with and appreciative of the petitioner's work. Having assisted well-known designers or having been involved with productions that attracted media attention is not indicative of the petitioner's contributions of major significance in the field. The fact that someone is involved in staging a successful, or even well-known or well publicized, performance and/or other

types of performing arts exhibitions is not indicative of that person's contributions of major significance in the field. Many people are involved with a live performance or performing arts exhibit, not all of them have made contributions of major significance in the entire field. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia v. Beers*, __ F. Supp. 2d __, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

Second, being a professional set or production designer is not indicative of the petitioner's contributions of major significance in the field. The evidence established that the petitioner has received work offers and has performed his duties well. For example, according to Interim Director and Project Manager of the petitioner "learns fast, is attentive, has good problem solving skills and is easy to work with, even in hectic situations such as an exhibition take down with an eight-hour time frame." According to Secretary General of the petitioner's "unique talent made [the project possible and was praised by national and international experts in the field." According to a professional set designer, the petitioner "has been a valuable collaborator on the projects we have worked on together." According to a Brooklyn based choreographer and performer, the petitioner "always brought something new and exciting to the table for each design meeting, which contributed significantly to the development of [an Accidental Movement] production." According to a film director and former architect, "[h]aving [the petitioner] by my side keeps our vision on point. While working with him, he has always been completely devoted to accomplishing this vision." According to Founder and Executive/Artistic Director of the the petitioner "was able to design a unit set that fully accommodated the needs of the production [of and was absolutely striking. Additionally, the set was brought in under budget, and ahead of deadline." According to Assistant Professor at Graduate School of Film and Television, the petitioner "possesses a skill set that places him in high demand in this industry." Being employed in one's field and performing one's duties well, however, are insufficient to show that the petitioner has made an impact in the field consistent with contributions of major significance in the field in which he claims extraordinary ability. These letters are insufficient to show the petitioner has made an impact in the field.

Third, the evidence shows that the petitioner's references believe he has potential in the field. Their speculation of the petitioner's future success is insufficient to establish that he has made contributions of major significance in the field. A number of the individuals, who submitted letters in support of the petitioner's instant petition and his O-1 visa petition, indicate that the petitioner has the potential for success in the field. For example, a professional set designer, states that the petitioner's "talents and work give him immense potential to help the development of this art [of set designing] to its next era." Professor states that the petitioner "has great potential and that . . . [he] will be equally successful in both the theatrical and entertainment industries." Ms. a Broadway set designer and creator of , a performing arts project, states that

the petitioner's "talents and work ethic give him immense potential to help the development of this art to its next era." Mr. [redacted] states that the petitioner's "achievements as an artist will undoubtedly contribute to the growth of the entertainment industry in the future." Mr. [redacted] (first name illegible), Studio Manager at [redacted] states "I believe [the petitioner's] work is important and he should have the opportunity to fully explore his ideas further. He is sure to be successful." A representative of [redacted] states that the petitioner "is well poised to achieve the highest level of professional distinction. He has a lot to contribute to the industry, both in his design skills and his unique artistic vision." A prediction of future success is not indicative of the petitioner's current success or the contributions he has already made in the field.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board has also held, however, "[w]e not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Vague, solicited letters from colleagues or associates that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010).[4] The opinions of experts in the field are not without weight and have been considered. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Matter of Caron Int'l*, 19 I&N Dec. at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *Visinscaia*, 2013 WL 6571822 at *6 (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field). While the evidence confirms that the petitioner has been employed as a professional set or production desiger, the evidence does not establish that the impact of his work in the field has risen to a level consistent with contributions of major significance.

Accordingly, the petitioner has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

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[4] In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

The director concluded that the petitioner meets this criterion. The record supports the director's finding. According to Mr. [redacted] the petitioner was involved in the set designing and set production of the Broadway play [redacted]" a Chicago Opera performance of [redacted] and a Vienna State Opera performance of [redacted] Accordingly, the petitioner has presented evidence of the display of his work in the field at artistic exhibitions or showcases. The petitioner has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The petitioner asserts that he meets this criterion because he "is constantly sought after to display his extraordinary art as a lead or starring participant in world renowned productions, live performances, advertising campaigns and television shows that have no questions regarding their distinguished reputation" and because his "receipt of multiple awards and media coverage for his work." The evidence in the record does not establish that the petitioner meets this criterion.

On appeal, the petitioner does not specifically identify the name of any organizations or establishments for which he claims to have performed either a leading or critical role. He has also not pointed to evidence in the record that establishes that these organizations or establishments have a distinguished reputation, as required by the plain language of the criterion. The evidence shows that the petitioner has been involved in many projects and has performed his duties to the satisfaction of others involved. For example, Ms. [redacted] states that the petitioner "contributes [his] invaluable skills, often in a critical and/or pivotal manner, to the creation of my art including the early stages of [redacted] Opera." Mr. [redacted], states that the petitioner "achieved exceptional results in every project he was given [and] his contribution to demanding projects . . . is most appreciated and valued" and that his ability and talent "sets him apart from other associates." Being involved in a project and having contributed to the success of a project are insufficient to show that the petitioner has performed in a leading or critical role for the organization or establishment that completed or commissioned the project. Many individuals are involved in an art project and a successful art project requires contributions from many individuals. One's involvement in a collaborative art project, however, is not indicative that the individual has performed either a leading or critical role for an organization or establishment that has a distinguished reputation.

Accordingly, the petitioner has not presented evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

C. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence in the field of endeavor, as required under the regulation at 8 C.F.R. § 204.5(h)(3).

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While we conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, we need not explain that conclusion in a final merits determination.[5] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

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[5] We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).